

1954

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CONCORD, N.H.

Brigadier General John Jacobson, Jr.,  
The Adjutant General,  
State Military Reservation  
Concord, New Hampshire

Dear General Jacobson:

Under date of February 8, 1954 you have inquired whether the Town of Peterborough may legally enter into a contract with the State of New Hampshire under the terms of which the Town will vote to defray a part of the construction costs of the new State Armory and, also, will vote to pay a portion of the annual maintenance costs of the same. In return for such contribution the Town would be permitted to use the Armory for town purposes when such use would not interfere with military requirements. You advise that the construction costs expected of the Town would be between thirty and forty thousand dollars, such sum to be available at the time of construction. We would characterize the Town's power in this regard as extremely doubtful.

We note, first, that there is no express statutory provision which would permit such an undertaking upon the part of a town. Since towns have only such powers as are conferred upon them by statute, (*Whitefield v. Dalton*, 80 N.H. 93, 94) it is necessary to consider whether such undertaking is fairly implied within other pertinent statutes.

The purposes for which towns may raise and appropriate funds appear in R.L. c. 51, s. 4, subsec. I - XXXIII, as amended. One of these is pertinent:

"XII. Armories. To provide and maintain armories for military organizations stationed therein which form part of the New Hampshire National Guard or reserve militia, not exceeding five hundred dollars yearly for each organization."

February 11, 1954

This provision contains within its terms the only power which a town has with respect to furnishing funds for armories, under the rule of statutory construction that the mention of one aspect of a matter is to exclude all other aspects. That is to say, the raising of funds for armories having thus been expressly acted upon by the Legislature, we are to presume that funds are to be raised and expended in that regard for no other purposes and in no other manner than as so enacted.

The sole limitation upon the town itself is that the funds cannot exceed \$500 yearly. Parenthetically, we do not find that the fact that the building upon which the monies would be expended does not belong to the town makes any difference; obviously, the sum of \$500 is more clearly designed for rental than for purchase.

It is clear that the sum which the Town can raise in any one year for armory purposes falls far short of the thirty or forty thousand dollars required for construction. The Town cannot, therefore, raise and appropriate such sum this year. We next consider whether the Town may issue its bonds, and service them for the amount of \$500 yearly. An examination of R.L. c. 72 (Municipal Finance Act) indicates that the capital expenditures for which money may be borrowed must be with respect to property owned by the Town; that is, no provision is seen suggesting that capital funds may be spent on property not owned by the Town under the Municipal Finance Act.

With respect to annual maintenance costs, it may well be that \$500 per year would be adequate for this purpose. However, in the absence of statute a town has no power to contract in such a way as to bind future town meetings. Despite an apparently valid contract, then, each town meeting must be called upon to consider the specific question whether to vote the necessary funds. Upon refusal the State has no remedy against the town, since the town, in originally making the contract, was acting in excess of its powers.

In such circumstances we can but suggest that enabling legislation is required which would both authorize the Town to raise necessary funds and protect the State.

Before closing, I should like to invite your attention to Laws 1947, c. 245, s. 6; since this is limited entirely to the acquisition of land, it is not deemed applicable here.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

WEW:RH